IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs October 24, 2005

JEFF RAGSDALE ET AL. v. JERRY WAYNE DEERING, II, ET AL.

Appeal from the Circuit Court for Robertson County
No. 9927 Ross H. Hicks, Judge

No. M2004-00672-COA-R9-CV - Filed on August 30, 2006

The defendant deliberately rammed the company truck he was driving into the plaintiffs' pickup truck, severely injuring the occupant driver and passenger. The plaintiffs sued the truck driver and his employer. They also served the complaint on the injured driver's own insurance carrier, pursuant to Tenn. Code Ann. § 56-7-1206, to protect their right of recovery in the event that the defendants were found to be uninsured or underinsured. The defendant truck driver's liability carrier subsequently denied coverage to him under a policy exclusion for intentional acts. The injured driver's uninsured motorist insurance carrier then filed a motion for summary judgment asking the trial court to rule that the plaintiffs were not entitled to uninsured motorist coverage under the insurance contract. The trial court denied the insurance company's motion, and we granted an interlocutory appeal. We affirm the trial court.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

Wendy Lynne Longmire, Julie Bhattacharya Peak, Nashville, Tennessee, for the appellant, Unnamed Defendant, Shelter Insurance Companies.

Brian Patrick Dunigan, Michael D. Ponce & Associates, Goodlettsville, Tennessee, for the appellees, Jeff Ragsdale and Brandon Hargrove.

OPINION

The facts of this case are undisputed for purposes of this appeal and may be stated very briefly. On May 13, 2001, defendant Jerry Wayne Deering deliberately drove a truck owned by his employer, Purity Dairies, in such a way as to ram it into a pickup truck at forty miles per hour. The driver of the pickup, Jeff Ragsdale, and his passenger, Brandon Hargrove, both suffered severe

injuries from the incident. Mr. Deering admitted that he intended to injure the plaintiffs. The record shows that he was indicted for aggravated assault and that he plead guilty to the charge.[1]

Mr. Ragsdale and Mr. Hargrove filed a civil complaint against Mr. Deering in the Circuit Court of Robertson County. They also served a copy of the complaint upon Mr. Ragsdale's insurer, Shelter Insurance Company ("Shelter"), seeking coverage under his policy's uninsured motorist ("UM") provisions, in the event that Mr. Deering should prove to be uninsured or underinsured. *See* Tenn. Code Ann. § 56-7-1206.

Mr. Deering's liability carrier denied coverage to him because of an exclusion in his policy for intentional acts by the insured. This denial rendered Mr. Deering uninsured. Shelter then filed a motion for summary judgment, together with its policy of insurance, some excerpts from a transcript of Mr. Deering's deposition, and a statement of undisputed facts. The company argued that its UM policy did not provide coverage when the damages arose from the intentional act of an uninsured motorist. The court conducted a hearing on the insurance company's motion and denied the motion in an order filed on December 23.

Shelter then moved the trial court for permission to file an interlocutory appeal of the trial court's order under Tenn. R. App. P. 9. The plaintiffs did not oppose the application. The trial court granted the motion, and this court agreed to hear the appeal, concurring with the trial court that "an interlocutory appeal may prevent needless, expensive and protracted litigation."

I. SUMMARY JUDGMENT STANDARDS

The standards for our review of a summary judgment decision are well settled. This court must review the record without a presumption of correctness to determine whether the requirements of Tenn. R. Civ. P. 56 have been met. *Eadie v. Complete Co., Inc.*, 142 S.W.3d 288, 291 (Tenn. 2004); *Blair v. West Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004); *Staples v. CBL & Assoc.*, 15 S.W.3d 83, 88 (Tenn. 2000). The requirements for the grant of summary judgment are that the filings supporting the motion show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; *Blair*, 130 S.W.3d at 764. Thus, summary judgment should be granted only when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion - that the party seeking the summary judgment is entitled to a judgment as a matter of law. *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265 (Tenn. 2001); *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 66 (Tenn. 2001); *Goodloe v. State*, 36 S.W.3d 62, 65 (Tenn. 2001).

[1]Shelter implies in its brief that Mr. Ragsdale and Mr. Deering had a long-running feud and that they were playing a "cat-and-mouse game" at the time of the collision. There is nothing in the record that we could use to evaluate the accuracy of this assertion. In any event, the only the question before us whether Shelter is entitled to a summary judgment on its contention that UM coverage is inapplicable because Mr. Ragsdale's injuries were caused by Mr. Deering's intentional act and did not arise from proper use of the vehicle.

We must consider the evidence in the light most favorable to the non-moving party, and we must resolve all inferences in the non-moving party's favor. *Doe v. HCA Health Servs., Inc.*, 46 S.W.3d 191, 196 (Tenn. 2001); *Memphis Hous. Auth. v. Thompson*, 38 S.W.3d 504, 507 (Tenn. 2001).

The relevant facts herein are undisputed. Because questions of the scope of an insurance policy's coverage require the interpretation of the insurance contract, cases such as this one present questions of law. *Victoria Insurance Company v. Hawkins*, 31 S.W.3d 578, 580 (Tenn. Ct. App. 2000). Consequently, they are particularly appropriate for resolution by summary judgment when the facts are undisputed. *Id.*; *Standard Fire Ins. Co. v. Chester O'Donley & Assoc.*, 972 S.W.2d 1 (Tenn. Ct. App. 1998). Our review of a trial court's summary judgment is *de novo* with no presumption of correctness since the trial court's decision is a question of law. *Scott v. Ashland Healthcare Ctr., Inc.*, 49 S.W.3d 281, 285 (Tenn. 2001).

II. THE CONTRACT OF INSURANCE

The analysis to be used in construing insurance contracts is also well settled. They should be construed like other contracts, so as to give effect to their express language and the intentions of the parties. *Harrell v. Minnesota Mutual Life Insurance Co.*, 937 S.W.2d 809, 814 (Tenn. 1996); *Tata v. Nichols*, 848 S.W.2d 649, 650 (Tenn. 1993). Words in an insurance policy are given their common and ordinary meaning. Because the policy was drafted by the insurance company, any ambiguity of language should be construed against the insurance company and in favor of the insured. *Allstate Insurance Co. v. Watts*, 811 S.W.2d 883, 886 (Tenn. 1991); *NSA DBA Benefit Plan, Inc. v. Connecticut General Life Insurance*, 968 S.W.2d 791, 795 (Tenn. Ct. App. 1997); *Anderson v. Bennett*, 834 S.W.2d 320, 322 (Tenn. Ct. App. 1992). "Exceptions, exclusions and limitations are to be most strongly construed against the insurer." *Travelers Insurance v. Aetna Casualty & Surety Co.*, 491 S.W.2d 363, 367 (Tenn. 1973).

The Shelter contract at issue herein includes language that is similar or identical to language in virtually all uninsured motorist policies that have been quoted in appellate cases involving UM coverage. It reads as follows:

> **We** will pay damages for **bodily injury** which an **insured** or the **insured's** legal representative is legally entitled to recover from the owner or operator of an **uninsured motor vehicle**. The **bodily injury** must be caused **by accident** and arise out of the ownership, maintenance or **use** of the **uninsured motor vehicle**.[2]

According to Shelter, this language excludes coverage of injuries resulting from Mr. Deering's intentional act because those injuries were not caused "by accident" and/or did not arise

[2]The words appearing in bold in this quote are also printed in bold type in the policy, indicating they are defined elsewhere in the policy. Pertinent to the case before us, the definition of "uninsured motor vehicle" includes one which is covered by an insurance policy but coverage is denied by the issuing company.

out of the proper "use" of the truck. Shelter relies on its general UM coverage provisions and on Tennessee cases interpreting similar contract provisions.

III. THE UNINSURED MOTORIST STATUTES

Tennessee requires every policy of automobile liability insurance to include uninsured motorist coverage "for the protection of persons insured thereunder who are legally entitled to recover compensatory damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom." Tenn. Code Ann. § 56-7-1201. A party buying liability insurance may refuse uninsured motorist coverage by rejecting it in writing. Tenn. Code Ann. § 56-7-1201(a)(2).

The Tennessee Supreme Court has described the reasons the legislature chose to require insurers to offer uninsured motorist coverage to those buying general liability coverage and the benefit that such coverage provides:

> Our uninsured motorist statute was enacted in response to the growing public concern over the increasing problem arising from property and personal injury damage inflicted by uninsured and financially irresponsible motorists. Its purpose is to provide, within fixed limits, some recompense to those who receive bodily injury or property damage through the conduct of an uninsured motorist who cannot respond in damages.

Tata v. Nichols, 848 S.W.2d 649, 654 (Tenn. 1993), *quoting Shoffner v. State Farm Mutual Automobile Ins. Co.*, 494 S.W.2d 756, 758 (Tenn. 1972), *rev'd on other grounds*, *State Farm Mutual Automobile Ins. Co. v. Cummings*, 519 S.W.2d 773 (Tenn. 1975).

The statutory requirements of uninsured motorist coverage form part of the contract and, as a matter of law, become provisions of the policy. *Sherer v. Linginfelter*, 29 S.W.3d 451, 454 (Tenn.2000). "[A]ny statute applicable to an insurance policy becomes part of the policy and such statutory provisions override and supercede anything in the policy repugnant to the provisions of the statute." *Id.* at 453-54 (Tenn.2000), *quoting Hermitage Health & Life Ins. Co. v. Cagle*, 57 Tenn.App. 507, 420 S.W.2d 591, 594 (1967). Consequently, where there is a conflict between a statutory provision and a policy provision, the statutory provision must prevail. *Sherer*, 29 S.W.3d at 454.

The uninsured motorist statutes do not provide broad coverage amounting to personal injury protection. *Dockins v. Balboa*, 764 S.W.2d 529, 532 (Tenn.1989); *Bruno v. Blankenship*, 876 S.W.2d 294, 297 (Tenn. Ct. App.1992). Neither were they intended to put the insured party in a better position than he would be had he been injured by someone who was insured. *Shoffner*, 494 S.W.2d at 759 ("fundamental legislative design [of the uninsured motorist statute] that the insured

be placed in as good a position as, but no better position than he would occupy if he had been injured by an individual who complied with the financial responsibility law").[3]

Additionally, insurers may lawfully place exclusions in their uninsured motorists policies that are not contrary to the uninsured motorist statutes or violative of public policy. *Dockins*, 764 S.W.2d at 530. That includes exclusions the carrier could put in a liability policy. *Id*. Any such exclusions, however, must be clear and unambiguous, and any ambiguity will be construed against the insurer and in favor of coverage. *Tata*, 848 S.W.2d at 650; *Watts*, 811 S.W.2d at 886. As the Tennessee Supreme Court has stated, "the sole object of the insured in obtaining insurance is indemnity," and, consequently, exclusions should be strongly construed against the insurer. *Travelers*, 491 S.W.2d at 367.

IV. INTENTIONAL ACTS OF THIRD PARTY

Shelter does not primarily rely on the argument that coverage is not available because the plaintiffs' injuries were caused by the uninsured motorist's intentional acts,[4] choosing instead to concentrate its efforts on the "proper use" argument discussed below. Nonetheless, we think it necessary to consider the "intentional vs. accidental" issue in order to properly resolve this appeal.

In the case before us, the automobile liability carrier for the intentional tortfeasor, Mr. Deering, denied him coverage because of an exclusion in his policy for intentional acts by the insured. Similarly, those portions of Mr. Ragsdale's insurance contract at issue that relate to liability coverage specifically exclude such coverage for "bodily injury or property damage caused intentionally by or under the direction of the insured." The public policy reasons supporting exclusion from coverage of injuries resulting from intentional acts of the insured are obvious. A person should not be able to insure himself against the consequences of his or her own intentional acts. *See Fidelity and Cas. Co. of New York v. Wrather*, 652 S.W.2d 245, 249 (Mo. App. 1983). Underlying that policy, of course, is the fact that an insured can control his own actions. Where the injuries to the insured resulted from the wrongful act of an uninsured third party, the public policy objections to coverage do not apply.

We find nothing in the UM statutes to limit coverage to unintentional conduct by the uninsured motorist. The term "uninsured motor vehicle" is defined as a vehicle whose "ownership, maintenance, or use" results in injury. Tenn. Code Ann. § 56-7-1202(a). Further, the purpose of such coverage is the protection of those "legally entitled to recover compensatory damages from owners or operators of uninsured motor vehicles . . . ." Tenn. Code Ann. § 56-7-1201. Mr. Ragsdale

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[3] This holding in *Shoffner* was in the context of the court interpreting what is now Tenn. Code Ann. § 56-7-1205 that provides uninsured motorist limits need not exceed the minimum limits of Tenn. Code Ann. § 55-12-107, the Financial Responsibility Law. 494 S.W.2d at 759.

[4] In one paragraph of the brief, Shelter does argue the injuries were not "caused by accident", in spite of the conclusion in *Stepp v. Hill*, No. 02A01-9209-CV-00278, 1993 WL 181984 (Tenn. Ct. App. May 28, 1993)(no Tenn. R. App. P. 11 application filed).

certainly has a cause of action against Mr. Deering for the injuries he sustained and would be entitled to recover against Mr. Deering.

The uninsured motorist statutes do not specifically require insurance companies to offer their clients coverage against intentional acts by uninsured motorists, nor do they prohibit such coverage. In the case before us, while the insurance contract's UM provisions contain some exclusions, there is no specific exclusion from coverage for injuries to the insured that result from intentional acts by uninsured motorists. Looking to the language of the UM portion of the policy itself, it provides coverage for injuries caused "by accident." Thus, the question becomes whether that policy language excludes coverage for intentional acts of the uninsured motorist. In answering that question, the determinative factor is whether the definition of "accident" is considered from the perspective of the uninsured motorist or that of the injured insured.

Because the uninsured motorist policy is a direct contract between the insurer, here Shelter, and the insured, here Mr. Ragsdale, and the injury is caused by a third party, the better view is that the scope of coverage should be viewed from the perspective of the party who purchased the uninsured motorist coverage. The reasonable expectations of the average policy holder must guide interpretation of the policy's terms. *Harrell*, 937 S.W.2d at 812-13. "In our view, an insured should not have to consult a long line of case law or law review articles and treatises to determine the coverage he or she is purchasing under an insurance policy." *Id*. at 814.

The issue of coverage of injuries from intentional acts in the UM context has been the subject of a number of cases in various jurisdictions. *See Coverage Under Uninsured Motorist Clause of Injury Inflicted Intentionally*, 72 ALR 3d 1161 (1976 & Supp.). A majority of jurisdictions have ruled that such intentional acts may be covered under UM policies. In those jurisdictions, it has been determined that the definition of "accident" must be decided from the perspective of the insured victim. From that person's standpoint, the event is certainly unexpected and unintended, and thus meets the definition of an accident.

> The intent in the mind of the insured at the time of injury should determine whether the acts are accidental or intentional. To look through the eyes of the uninsured rather than the insured in this factual situation would require an unconscionable twisting of the obvious purpose of purchasing insurance coverage.

Celina Mutual Insurance Co. v. Saylor, 201 N.E.2d , 721, 723 (Ohio Com. Pl. 1973). *See also Britt v. Phoenix Industrial Insurance Co.*, 907 P.2d 994 (N.M. 1995); *Alabama Farm Bureau Mutual Casualty Insurance v. Mitchell* , 373 So.2d 1129 (Al. App.1979).

Tennessee has clearly joined that majority. In *Stepp v. Hill*, No. 02A01-9209-CV-00278, 1993 WL 181984 (Tenn. Ct. App. May 28, 1993)(no Tenn. R. App. P. 11 application filed), this court thoroughly reviewed the law from other states, adopted the same reasoning set out above, and found that UM coverage was applicable under facts remarkably similar to those in the instant case.

Mr. Hill intentionally drove his vehicle into a vehicle owned and operated by Mr. and Mrs. Stepp, injuring them. He subsequently pleaded guilty to a charge of aggravated assault and was sentenced to a term in the penitentiary. The liability carrier for Hill's vehicle denied coverage because its policy excluded coverage for an intentional act. The Stepps then claimed UM coverage under their own policy with Preferred Risk Mutual Insurance Company. The trial court granted Preferred a summary judgment based on the language of its insurance policy. We reversed.

The issue in that appeal was whether the incident was "caused by an accident" as was required for UM coverage under the Preferred policy. We noted that the policy in question did not define "accident" and that there was no prior Tennessee case that dealt with that exact question. We therefore turned for guidance to other jurisdictions which had considered similar questions.

We found that the majority of those jurisdictions had held that an intentional act by an uninsured motorist was still an accident from the point of view of the insured victim because, from the victim's perspective, such an incident was unexpected and unintended. *See Keeler v. Farmers & Merchants Insurance Co.*, 724 S.W.2d 307 (Mo. App. 1987)(plaintiffs injured when their car was intentionally rammed were entitled to UM coverage, because the policy did not exclude coverage for injuries caused by the intentional act of an uninsured motorist). We adopted the reasoning of the *Keeler* court, and held that the Stepps were likewise entitled to UM coverage, even though their injuries were caused by the intentional acts of an uninsured driver.

That holding is consistent with generally accepted principles. *See* Alan I. Widiss, 1 UNINSURED AND UNDERINSURED MOTORIST INSURANCE (rev. 2d ed) § 10.2 at 655-659. In sum, we interpret the language of the policy at issue to include UM coverage for injuries caused by the intentional acts of uninsured motorists.

V. ARISING OUT OF THE USE OF THE UNINSURED VEHICLE

Shelter's primary argument has its basis in the language of the policy covering bodily injury arising out of the "use" of the uninsured motor vehicle. While it is clear that the injuries sustained in this case resulted from Mr. Deering's use of the truck he was driving, Shelter relies on a series of Tennessee cases which have construed insurance contracts containing the same phrase as limiting coverage to uses that are "proper." Shelter argues that using the truck as a weapon to ram Mr. Ragsdale's car was not a proper use and, therefore, not within the coverage of the policy.

The first case inserting "proper" as a modifier of "use" of a vehicle is *Travelers Insurance v. Aetna Casualty & Surety Co.*, 491 S.W.2d 363 (Tenn. 1973), which involved a guest passenger in an automobile who was wounded when a shotgun accidentally discharged as the insured party was loading the vehicle for a hunting trip.

The Court considered coverage of the injuries under the language of both (1) an automobile liability policy issued by Aetna that extended coverage to liability arising out of the "use" of an automobile and (2) an exclusion from coverage in a homeowners' policy issued by Travelers that

excluded injuries arising out of the "use," including loading and unloading, of an automobile. The Court held both policies covered the injuries and both companies could be held liable.

With regard to the automobile liability policy, the Court found that the term "use" was ambiguous and had been the subject of many court interpretations. Further,

> The term 'arising out of the use' in liability policies has generally been held to be a broad, comprehensive term meaning 'origination from,' 'having its origin in,' 'growing out,' or 'flowing from.' The term 'use,' then, has been a general catchall term construed by the courts to include all proper uses of a vehicle. That broad construction is made possible by the inherent ambiguity of the term, and further, that ambiguity calls for a strict construction against the party who drew the contract.

491 S.W.2d at 365.

The court went on to find that the vehicle was being used to transport young men on a hunting trip, that such use was proper, and that loading the vehicle in preparation for the trip was a part of that use. The Court further found the required causal connection between the use of the vehicle and the injury. The Court also observed that courts had been liberal in finding the causal relationship and in allowing recovery because of the inherent ambiguity in the term "arising out of the use" and the strict construction of that term against the party drafting the contract. *Id*. at 366.

As to the exclusion in the homeowners' policy, the Court recognized that some courts had concluded that if an automobile liability policy covering injuries "arising out of the use" of an automobile were found to cover the injuries in question, then a homeowners policy excluding injuries "arising out of the use " of an automobile would not provide coverage for the same injuries. However, the Court found that the conclusion that the same definitions and standards of causation applied to both types of insurance or both policies was "wrong." *Id*. at 366.

The reason was that the definitions and standard of causation applied in those cases had grown out of cases strictly construing the language of automobile liability policies against the insurer. The Court held that the terms defined in reference to automobile carriers should not be applicable to a homeowner's policy seeking to exclude coverage. Instead, "homeowner policies of insurance should stand on their own language and exclusions should be strongly construed against the insurer." *Id.* at 367.

The Court went on to hold that since neither the act of loading the vehicle nor the use of the vehicle was the efficient and predominating cause of the injury, the requisite causal relationship necessary to bring it within the exclusion in the policy was not present. *Id.* at 367-68.

It is not clear to us that the holdings in *Travelers* support Shelter's arguments in the case before us. First, *Travelers* stands for the proposition that the term "arising out of the use" of a motor vehicle may be interpreted differently in determining coverage, depending in part on whether the

language is used to define coverage or an exclusion. In both situations, the ambiguous term must be construed against the insurer and in favor of coverage.

Second, although the Court in *Travelers* used the term "proper use" and found the activities at issue to be a proper use, the Court did not define the term. Its application of the term, however, was a broad one intended to provide coverage, not exclude it. The court referred to the term as generally having a broad, comprehensive meaning. *Travelers*, 491 S.W.2d at 365. That characterization is consistent with other courts. *See, e.g., Whitehead v. State Farm Mut. Automobile Ins. Co.*, 952 S.W.2d 79, 85 (Tex. Ct. App. 1997)(stating "the term 'use' is a type of catch-all term not limited to 'ordinary use,' and any exercise of control over the vehicle constitutes a use.") Thus, we do not consider the language used by the court in *Travelers* to be intended to limit interpretation of "use" or to imply there are two types of uses: proper and improper.

More significant is the *Travelers* court's separate analysis of the two required elements: use of a vehicle and a causal relationship ("arising from") between that use and the injury. Causation, or the lack thereof, is generally the deciding factor, not the determination of whether the use was proper.

> When intentional tortuous acts are committed by the driver or occupant of an uninsured or unidentified vehicle, **the relationship of the tort to the "use" of the vehicle may be evident - especially when the vehicle itself is the "instrument" employed to commit the tort**. Although courts are generally inclined to accord coverage terms such as "arising out of the use" a broad scope, this does not mean the insurance is transformed into an unlimited protection. Courts typically examine the events to ascertain whether it is reasonable to conclude that there is a causal relationship between the use of the vehicle and the injuries sustained.

Alan I. Widiss, 1 UNINSURED AND UNDERINSURED MOTORIST INSURANCE (rev. 2d ed) § 11.5 at 686 (emphasis added). As the highlighted portion indicates, the question of use is not generally an issue when it is clear that the vehicle was used to commit the tort. We have reviewed the cases in the cited treatise, the cases cited to us by Shelter, and others. We have not found a case where actual collision by the uninsured motorist or vehicle was found not to arise from the use of the vehicle. In fact, almost all of the cases involve questions where the connection between vehicle and its use and the actual injury was much more attenuated, such as the loading and unloading question in *Travelers*, assaults after a traffic accident, negligently parked vehicles, etc. *Id.* at § 11.4.

We conclude that the injuries herein were the result of and did arise out of the use of the vehicle. Shelter argues, however, that the use was not "proper" in the sense it was wrongful and cites to other Tennessee cases involving the concept of "proper use." In *Anderson v. Bennett*, 834 S.W.2d 320 (Tenn. Ct. App. 1992), this court applied the concept of a "proper use," citing *Travelers*, to bar coverage under an uninsured motorist policy. A twelve year old girl was injured when a motorist shot a pistol in the direction of a group of children who had thrown a clod of dirt at his car. The girl's parents sued the driver and served the company that provided insurance (including

uninsured motorist coverage) for their family automobile. We held that the child's injuries did not arise from a proper or normal use of a motor vehicle and, thus, that uninsured motorist coverage did not apply.

Shelter has cited two more recent cases in which this court again resorted to the concept of "proper use" to distinguish between those situations in which uninsured motorist coverage applies and those in which it does not. In *Weil v. Gaia*, No. 02A01-9804-CV-00098, 1999 WL 455432 (Tenn. Ct. App. June 29, 1999)(Tenn. R. App. P. 11 permission to appeal denied, Oct. 25, 1999), defendant John Gaia fired a pistol from a moving vehicle, wounding Jessica Weil, who was a passenger in another car.

We reasoned that "Under *Travelers*, the first inquiry is to determine whether Gaia's use of the vehicle was proper." The defendant had earlier used his vehicle to ram and pursue the car in which Weil was a passenger, but we noted that she was not injured by this action. We turned our focus instead to the real cause of her injury, the defendant's use of his vehicle to fire a weapon from. Again citing *Travelers* and *Anderson*, we concluded that this was "not a proper or normal use of the vehicle" and that coverage therefore did not apply.

In *Nicely v. Doe*, No. 03A01-9810-CV-0032, 1999 WL 235795 (Tenn. Ct. App. April 16, 1999)(no Tenn. R. App. P. 11 application filed), the unknown defendant tossed a bag of trash out the window of a moving car. This caused the plaintiff driver of another car to swerve to miss the flying debris, lose control, and ultimately crash into a tree, causing serious injuries. We held that there was no coverage, in part because

> plaintiff's accident was not caused, directly or indirectly, by a motor vehicle, but rather by an improper act of an occupant of a car – an act that was essentially **unrelated** to the act of using that vehicle. Throwing something out of the window of a car is not a 'proper and normal use' of a motor vehicle.

The court's reference in *Nicely* to causation is the real determinative in all these cases. *See Bruno v. Blankenship*, 876 S.W.2d at 297 (explaining that cases involving shots fired or objects thrown from a car deny coverage because the vehicle is not the force that sets in motion the object striking the insured's vehicle); *see also Victoria Ins. Co. v. Hawkins*, 31 S.W.3d 578, 583 (Tenn. Ct. App. 2000) (holding that although the injured party's uninsured vehicle was being used in a proper manner, there was no causal connection between the injury and the actions of the driver of the uninsured vehicle).

While in *Anderson*, *Nicely*, and *Weil*, we stated that UM coverage did not apply because the unlawful actions of the defendants/tortfeasors were not "proper," the more accurate reasoning, or more correct statement of the analysis, is that the injuries could not be said to "originate from," "flow from," or "grow out of" the use of the vehicle. Instead, in each of those cases, the vehicle was merely the *situs* of the action. The shooting in *Anderson* and *Gaia* and the tossing of trash in *Nicely* were the causes of injury, not the fact that these wrongful acts were committed by individuals in a

moving automobile. *See United States Fidelity & Guaranty Co. v. Lehman*, 579 So.2d 585 (Ala. 1990) (holding that the victim's stab wounds did not arise out of the "use" of an automobile because the vehicle was merely the location where the stabbing occurred and the injuries could have occurred anywhere). These acts can be committed by an individual on foot as well as by one in a moving vehicle. The injuries in the present case clearly arose from Mr.Deering's use of the vehicle.

Shelter's argument is that we must interpret "proper" use as one that is not wrongful and that Mr. Deering's use of the moving vehicle as a weapon was indeed wrongful. We decline to make that interpretation and believe it would be contrary to existing law and lead to undesirable results. The plaintiffs in this case point out that our courts have recognized claims for uninsured motorist coverage in situations where the uninsured motorist was driving at a high rate of speed while extremely intoxicated, or in a stolen vehicle, or engaged in similar "wrongful" conduct while using a vehicle. *See Spicer v. Hilliard*, 879 S.W.2d 858 (Tenn.Ct.App. 1994)(uninsured drunk driver); *Bankers Fire and Insurance Co. v. Sampley*, 304 F.Supp. 523 (E.D. Tenn. 1969) (uninsured driver operating a stolen vehicle); *Malone v. Maddox*, No. E2002-01403-COA-R3-CV, 2003 WL 465668 (Tenn.Ct.App. Feb. 25, 2003)(no Tenn. R. App. P. 11 application filed)(uninsured motorist "driving on the wrong side of the road, at an excessive rate of speed, without headlights, and while under the influence of an intoxicant.").

It appears to us that if we were to accept the insurance company's arguments, we would be doing violence to firmly established principles of contract interpretation. "It has long been the rule in this state that in construing an insurance policy, uncertainties or ambiguities must be construed strongly against the insurer and in favor of the insured." *Travelers*, 491 S.W.2d at 366. The supplementation of one explicit but ambiguous contract term ("use") by an implied and ambiguous modifier ("proper") to limit insurance coverage would generate considerable uncertainty about the scope of uninsured motorist coverage.

As we noted above, the word "proper" is not even found in the text of the contract before us. However, the clause which provides coverage for injuries which are "caused by accident and arise out of the ownership, maintenance or use of the uninsured motor vehicle" is an integral part of the contract, and must be interpreted strongly against Shelter. We thus reject the company's argument that we should extend the coverage limitations derived from *Anderson* and the other cited cases to situations where the cause of the injury arose directly from the use of the uninsured motorist's vehicle, however wrongful it may have been for him to use his vehicle in that way.

VI.

The order of the trial court is affirmed. We remand this case to the Circuit Court of Robertson County for further proceedings consistent with this opinion. Tax the costs on appeal to the appellant, Shelter Insurance Company.

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PATRICIA J. COTTRELL, JUDGE